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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,295	02/06/2004	Joseph L. Ungari	005127.00267	5466
22910	7590	02/07/2006	EXAMINER	
BANNER & WITCOFF, LTD. 28 STATE STREET 28th FLOOR BOSTON, MA 02109-9601			STASHICK, ANTHONY D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,295

Applicant(s)

UNGARI, JOSEPH L.

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 12-17, 20-29, 32, 33, 36-41 and 44-48 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 10, 11, 18, 19, 30, 31, 34, 35, 42 and 43 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01182005.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 8-9, 17, 25-29, 32-33 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Rice 3,631,614. Rice '614 discloses all the limitations of the claims including the following: a sole structure 14, 20 for an article of footwear comprising a sole; at least one cleat assembly 25, 28, 30, 36 pivotally connected to the sole (see Figure 1) such that a medial portion and a lateral portion of the cleat assembly (through the heel in Figure 1) can move upwardly and downwardly with respect to the sole; each cleat assembly pivots about an axis (32 is a ball, but pivots about an axis from heel to toe as well as otherwise) that extends generally from a heel portion to a toe portion of the sole; each cleat assembly comprises a base member 28 and at least two cleats 29, 30 extending from a lower surface of the base member; each cleat assembly comprises a first cleat (left side of Figure 1) in a lateral portion of the base member and a second cleat (right side of Figure 1) in a medial portion of the base member; each cleat assembly includes a first projection 28 extending from a front surface of the cleat assembly and a second projection 28 extending from a rear surface of the cleat assembly (when viewed from the side of the heel), the first and second projections received in first and second recesses (forward of the center point is one recess, rearward of the center point is another recess), respectively, formed in the sole; at least one recess formed in a lower surface of the sole (defined by 12), each recess configured to receive a portion of a cleat assembly as it pivots with respect to the sole (see Figure 1 with respect to shadow of cleat); each recess comprises a first portion (medial side) configured to receive a medial portion of a cleat assembly and a second portion (lateral side) configured to receive a lateral portion of a cleat assembly as the cleat

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assembly pivots with respect to the sole (see figure 1 for pivoting); each cleat assembly comprising a base member 28 pivotally secured to the sole; a first cleat 28, 30 secured to a lateral area of the base member; and a second cleat 28, 30 secured to a medial area of the base member; an upper and a sole secured to the upper (typical shoe used in rice '614).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-16, 20-24, 36-40 and 44-48 are rejected under 35 U.S.C. 103(a) as being obvious over Rice 3,631,614 as applied above in view of Official Notice. Rice '614 as applied above discloses all the limitations of the claims except for all the specific locations of the cleat assemblies. Official Notice is taken that the use of multiple cleats on a shoe sole, i.e. in the heel arch and forefoot areas of the sole, to prevent slipping of the shoe in sports such as football and golf is well known. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place the wobble plate cleat of Rice '614 in multiple places of the user's shoe to prevent slippage when that area of the shoe comes into contact with the ground and starts to slip.

Allowable Subject Matter

5. Claims 6-7, 10-11, 18-19, 30-31, 34-35 and 42-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday through Thursday from 8:30 am until 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick
Primary Examiner
Art Unit 3728

ADS